

Message Text

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71

ORIGIN PM-09

INFO OCT-01 EUR-25 ADP-00 CIAE-00 INR-09 L-03 NEA-10

NSAE-00 PA-03 RSC-01 PRS-01 GAC-01 USIA-12 MBFR-03

SAJ-01 DODE-00 H-02 NSC-10 SS-14 ACDA-19 EB-11 TRSE-00

OMB-01 INRE-00 /136 R

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APPROVED BY PM/ ISO: JRDEWENTER

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AGC(IA) - MR. FORMAN SAFUSI - MR. ROBINSON

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NAVY JAG - CDR. KJOS COMPTROLLER - MR. UMBARGER

PM - MR. SPIERS EUR/ NE - MR. FLOYD (SUBS)

J-5 - COL. CONNELL (INFORMED)

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TO AMEMBASSY LONDON PRIORITY

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CINCUSAREUR

CINCUSNAVEUR

HQ 3 AF RAF MILDENHALL

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E. O. 11652: XGDS-1

TAGS: MARR, UK

SUBJECT: US/ UK COST SHARING ARRANGEMENTS

REF: A. LONDON 03258

B. LONDON 03259

C. LONDON 03288

D. LONDON 03289

E. LONDON 12030, DEC 13, 1972

F. LONDON 7391, AUG 8, 1972

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G. STATE 002571, JAN 5, 1972

1. IN LIGHT OF RECOMMENDATION REF C THAT A MAXIMUM EFFORT SHOULD BE MADE TO CONCLUDE NEW US/ UK COST- SHARING ARRANGEMENTS BY APRIL 1, WE CONSIDER PROPOSED UK TEXT (REF A) SATISFACTORY, PROVIDED FOLLOWING POINTS ARE MADE:

PARAGRAPH 1. (2)- INSERT THE WORD " UTILITIES" BETWEEN THE WORDS " THEREON" AND " RIGHTS." DEFINITION SHOULD MENTION UTILITIES SPECIFICALLY, SINCE THIS TERM IS NOT COVERED BY THE DEFINITION OF " LAND" AS WORDED IN REF A. THE TERM " UTILITIES" HAS APPEARED IN PREVIOUS UK DRAFT COST- SHARING ARRANGEMENTS (SEE REF F). THIS CHANGE DESIRABLE BUT NOT MANDATORY.

PARAGRAPH 2. (1). LAST SENTENCE OF CONCLUDING PARAGRAPH: WORD " SUCH" SHOULD BE OMITTED TO PRECLUDE POSSIBLE FUTURE MISUNDERSTANDING AS TO INTENT OF THE PARTIES, AND SENTENCE WOULD BEGIN WITH WORD " LAND." WHAT IS REQUIRED IS A SIMPLE STATEMENT THAT LAND MADE AVAILABLE FREE OF CHARGE UNDER WHATEVER ARRANGEMENT, E. G., 1953 COST- SHARING ARRANGEMENT, WILL CONTINUE TO BE SO AVAILABLE TO THE US FORCES ON THE EFFECTIVE DATE OF THE NEW US/ UK COST- SHARING ARRANGEMENT. THIS CHANGE DESIRABLE BUT NOT MANDATORY.

PARAGRAPH 2. (4). FOR SAKE OF CLARITY AND TO GIVE US FORCES MORE FLEXIBILITY, WE WOULD PREFER TO REVERT TO PHRASEOLOGY OF AN EARLIER UK DRAFT (REF F) AND, THUS, WE WOULD LIKE TO SEE FIRST SENTENCE REWORDED AS FOLLOWS: " THE COST OF LAND PURCHASED OR LEASED BY THE US GOVERNMENT OTHER THAN THAT COVERED BY THIS PARAGRAPH WILL BE BORNE BY THE US GOVERNMENT, EXCEPT AS OTHERWISE AGREED." IF, HOWEVER, THIS CHANGE WOULD JEOPARDIZE OBTAINING UK SIGNATURE BY APRIL 1, EMBASSY AUTHORIZED ACCEPT PRESENT VERSION.

PARAGRAPH 2. (7). WE WOULD PREFER REVERT TO AN EARLIER UK VERSION OF THIS PROVISION (SEE REF F) TO MAKE ACCRUAL OF RESIDUAL VALUE TO HMG DEPENDENT ON RELINQUISHMENT OF LAND BY THE US FORCES, RATHER THAN ON HMG CEASING TO MAKE AVAILABLE LAND TO THE US FORCES. ACCORDINGLY, WE WOULD LIKE PARAGRAPH TO BE REWORDED TO READ: " THE CONFIDENTIAL

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RESIDUAL VALUE OF LAND MADE AVAILABLE TO THE US FORCES BY HMG UNDER THIS PARAGRAPH AND RELINQUISHED BY THE US FORCES WILL ACCRUE ..." IF UK UNWILLING ACCEPT THIS CHANGE, EMBASSY AUTHORIZED ACCEPT PRESENT UK VERSION.

PARAGRAPH 2. (8). WHILE WE RECOGNIZE THAT DEFINITION OF " DEFENSE PURPOSES" APPLIES SPECIFICALLY ONLY TO LAND MADE AVAILABLE UNDER PARAGRAPHS 2. (1)(B) AND 2. (3), WE ARE STILL NOT SATISFIED WITH DEFINITION AS IT APPEARS IN

REF A. THIS DEFINITION WOULD RAISE THE QUESTION WHETHER IT COVERS FACILITIES NEEDED TO MEET US FORCES LOGISTICS REQUIREMENTS, SUCH AS HOUSING, SOCIAL, OR RECREATIONAL FACILITIES. MOREOVER, IT COULD BE INTERPRETED TO MEAN THAT THE PROVISION ON LAND IN THE NEW US/ UK COST- SHARING ARRANGEMENT DOES NOT APPLY TO US FORCES IN THE UK WHICH ARE SUPPORTING NATO OR OTHER US REQUIREMENTS. TO PRECLUDE POSSIBLE FUTURE MISUNOERSTANDINGS, IT WOULD BE HIGHLY DESIRABLE TO HAVE THE FOLLOWING REWORDING: " IN THIS PARAGRAPH ' DEFENSE PURPOSES' MEANS PURPOSES OF THE US FORCES IN THE UNITED KINGDOM WHICH ARE DIRECTLY DESIGNED TO FULFILL THE OPERATIONAL AND LOGISTICS MILITARY REQUIREMENTS OF THOSE FORCES." THIS CHANGE DESIRABLE BUT NOT MANDATORY.

PARAGRAPH 4. (3) (A). TO PRECLUDE ANY INFERENCE THAT THE USG WILL BE COMMITTED TO PAY CLAIMS OTHER THAN CONTRACT CLAIMS, IRRESPECTIVE AS TO WHETHER THEY ARE MERITORIOUS, FIRST SENTENCE SHOULD BE AMENDED TO READ:

" COMPENSATION PAID TO ANY PERSON WITH A LEGAL INTEREST IN LAND FOR CLAIMS FOR DAMAGE ARISING FROM THE EXECUTION OF WORKS CARRIED OUT PURSUANT TO SUBPARAGRAPH (1) ABOVE WILL BE A CHARGE ON CONSTRUCTION OR MAINTENANCE WORK COSTS TO BE BORNE BY THE UNITED STATES GOVERNMENT."

PRESENT WORDING WITHOUT THIS MODIFICATION WOULD NOT PROPERLY REFLECT US INTENTION AND THUS BE MISLEADING, CAUSING PROBLEMS IN FUTURE.

PARAGRAPH 4. (3) (B). FOR SAKE OF CLARITY AND TO PRECLUDE POSSIBLE FUTURE MISUNDERSTANDINGS, WE WOULD LIKE TO REPLACE TERM " LIABILITY" BY TERM " THE RESPONSIBILITY"
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AND, INSTEAD OF THE WORDS " TO MEET" THE WORD " FOR" SHOULD BE USED. THUS, THE SENTENCE WOULD READ: " WITHOUT PREJUDICE TO THE RESPONSIBILITY OF THE USG FOR SUCH CLAIMS, ... " IF THIS SHOULD RISK JEOPARDIZING AGREEMENT BY APRIL 1, EMBASSY AUTHORIZED TO WITHDRAW PROPOSAL ON UNDERSTANDING WITH UK THAT US AUTHORITIES WILL REVIEW CLAIMS FOR THEIR MERIT.

PARAGRAPH 4. (4). WE CONTINUE TO PREFER PROVISION SET FORTH IN PARAGRAPH 2 OF REFERENCE (G), READING AS FOLLOWS:

" CLAIMS FOR DAMAGE OR LOSS CAUSED BY A UK CONTRACTOR OR SUBCONTRACTOR, AND FOR WHICH THE CONTRACTOR, SUBCONTRACTOR, OR THE UNITED STATES GOVERNMENT CANNOT BE HELD LEGALLY LIABLE UNDER BRITISH LAW, WILL BE SYMPATHETICALLY

CONSIDERED FOR SETTLEMENT UNDER EXISTING US LAWS AND PROCEDURES."

IF, HOWEVER, INSISTENCE ON THIS LANGUAGE WOULD PREJUDICE OBTAINING UK SIGNATURE BY APRIL 1, EMBASSY IS AUTHORIZED TO OFFER FOLLOWING ALTERNATIVE, WHICH PARALLELS LANGUAGE SUGGESTED ABOVE WITH RESPECT TO PARAGRAPH 4. (3) (A):

" COMPENSATION PAID TO ANY THIRD PARTY, INCLUDING COSTS AND EXPENSES RELATING TO SUCH PAYMENTS, WITH RESPECT TO CLAIMS FOR INJURY (INCLUDING INJURY RESULTING IN DEATH), LOSS OR DAMAGE ARISING OUT OF ACTS OR OMISSIONS OF CONTRACTORS OR SUBCONTRACTORS OF HER MAJESTY' S GOVERNMENT IN THE EXECUTION OF CONSTRUCTION OR MAINTENANCE WORK UNDER THIS MEMORANDUM, INCLUDING CLAIMS WHICH ARE SETTLED BY HER MAJESTY' S GOVERNMENT AFTER PRIOR CONSULTATION WITH THE UNITED STATES GOVERNMENT, WILL BE A CHARGE ON CONSTRUCTION OR MAINTENANCE WORK COSTS TO BE BORNE BY THE UNITED STATES GOVERNMENT."

COMMENT: EXISTING LANGUAGE OF UK DRAFT WOULD ESTABLISH INDEMNIFICATION COMMITMENT WHICH IS NOT AUTHORIZED UNDER EXISTING US TORT CLAIMS STATUTE. OUR PROPOSED FALLBACK LANGUAGE CLEARLY LIMITS USG TO A CONTRACTUAL LIABILITY. WE ASSUME THAT IN ACCORDANCE WITH NORMAL PRACTICE, THIRD PARTY CLAIMS WOULD BE COVERED BY LIABILITY INSURANCE AS
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A CONTRACT COST.

2. SUBJECT TO PRESENTATION OF FOREGOING POINTS AND UK ACCEPTANCE OF THOSE PERTAINING TO PARAS 4.(3)(A) AND 4. (4), EMBASSY MAY CONFIRM THAT ARRANGEMENTS SET FORTH IN UK MEMORANDUM CORRECTLY SET OUT UNDERSTANDINGS BETWEEN THE TWO GOVERNMENTS. SINCE THEY ARE TO REMAIN CLASSIFIED, WE PLAN NO PUBLICITY, AND ASSUME UK WILL DO LIKEWISE.

3. GUIDANCE AS TO FORMAT OF US/ UK COST SHARING ARRANGEMENT WILL BE FORWARDED BY SEPTTEL NOT LATER THAN MARCH 26. ROGERS

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<< END OF DOCUMENT >>

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